IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1650 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DASHRATHBHAI MANILAL PATEL - Petitioner(s)

Versus

AHMEDABA URBAN DEVELOPMENT AUTHORITY & 2 - Respondent(s)

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Appearance :
MR MK VAKHARIA for Petitioner(s) : 1,
MR SN SHELAT for Respondent(s) : 1,
M/S PATEL ADVOCATES for Respondent(s) : 2,
NOTICE UNSERVED for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/09/2005

ORAL JUDGMENT

1.In this petition under Article 226 of the Constitution of India the petitioner has prayed for appropriate

write, order of direction directing the respondent no.1 – Ahmedabad Urban Development Authority , Ahmedabad (AUDA) to take immediate action for removal of the encroachment and the illegal construction of Ramji Mandir temple and its compound over the 80 ft. public road adjoining to Final Plot No.109 and 107 of the Final Town Planning Scheme No.2 of Ranip.

2.It is the contention on behalf of the petitioner that he is residing in Krishnadham Co-operative Housing Society Ltd. situated in Ranip area and that one of the road which is being utilized by the petitioner is Kashiba Road and the AUDA has prepared the development plan and the town planning scheme under the provision of the Gujarat Town Planning Act and the said Kashiba Road is under the finalized Town Planning Scheme. It is submitted on behalf of the petitioner that one Ramji Mandir Trust has encroached upon the area of public road and has illegally constructed a temple and also constructed its compound wall over the said area of the public road and the said encroachment is causing hindrance and obstruction in the traffic of the said road and inspite of the fact that the petitioner had approached time and again to the respondent authorities to remove the said encroachment over the public road but it appears that the respondent no.1 had joined

hands with respondent no.3 and no action has been taken for removal of the said encroachment of Ramji Mandir, which is on the public road and therefore, the petitioner has prayed for the aforesaid relief.

3. The affidavit-in-reply filed on behalf of the respondent no.1 in which it is stated that the said Ramji Mandir Trust has submitted an application dated 22nd July, 1986 requesting that they may be permitted to purchase the existing land. However, in view of the pendency of one Civil Suit No.795/86, the said application is not decided and till proper decision is taken on the said application, it has for the time being resolved not to do anything in respect of the alleged encroachment. It is also further submitted in the reply that there is existing road of 30' width and therefore, there is no prejudice cause to the petitioner. The some and substance of the affidavit-in-reply is that in view of the submission made by the Trust to purchase the said portion of the land in question, which is on public road and in view of the pendency of one Civil Suit No.795/86, the application is not decided and therefore, till the proper decision is taken it has been deciding not to remove the encroachment. However, it is required to be noted that it is an admitted position that that the respondent

no.3 – Trust has encroached upon the public road and have put up the construction. It is required to be noted that so far as the Civil Suit No.795 of 1986 is concerned, which is filed by one person directing to remove the encroachment and therefore, it is no ground not to remove the encroachment. The main reason which is weighed with the authority is that it is a religious public trust, who has encroached upon the public road and therefore, the encroachment is not removed. It is required to be noted that so far as the religious public trust is concerned, they have no right to encroach upon the public road. The religious public trust are not on a better footing then ordinary citizens. Once, it is found that there is an encroachment upon the public road, the authority is bound to remove the same and by not removing the same, it can be said that the public authority in the present case, respondent no.1 has failed in its statutory duty to remove the encroachment, which is on the public road and which is under the finalized Town Planning Scheme.

4. Under the circumstances, the respondent no.1 is required to be directed to perform its statutory duty of removing the encroachment be that it may be by the religious public trust.

5. For the reasons as stated above, the petition succeeds

and the respondent no.1 - Ahmedabad Urban Development Authority is directed to remove the encroachment and illegal construction made by the Ramji Mandir Trust i.e. respondent no.3, which is over the 80 ft. public road adjoining to Final Plot No.109 and 107 of the Final Town Planning Scheme No.2 of Ranip as early as possible, preferably within a period of 3 months from the date of receipt of this order after giving them some reasonable time to remove the encroachment.

6. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

(M.R.SHAH,J)

shekhar/-